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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,898	02/21/2006	Pieter De Jong	0702-052257	8368

28289 7590 03/06/2007  
THE WEBB LAW FIRM, P.C.  
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PITTSBURGH, PA 15219

EXAMINER
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TRIEU, THERESA

ART UNIT	PAPER NUMBER
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3748

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/06/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/542,898

Applicant(s)

DE JONG, PIETER

Examiner

Theresa Trieu

Art Unit

3748

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 July 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>May 18, 2006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

Receipt and entry of Applicant's Preliminary Amendment filed on July 20, 2005 is acknowledged.

Claims 1-19 have been canceled. Claims 20-35 have been added. Claims 20-35 are pending in this application.

#### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "5" has been used to designate both "outer housing segment (see page 5, line 11" and "dividing device (see page 7, line 11)". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "cylinder" recited in claims 28-30 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet,

Art Unit: 3748

even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

3. The disclosure is objected to because of the following informalities: page 5, line 27, "outer housing segment 6" should be changed to -- outer segment 5 --. Appropriate correction is required.

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting

Art Unit: 3748

ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claim 20 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 12 of U.S. Patent No. 7,037,093. Although the conflicting claims are not identical, they are not patentably distinct from each other because the application claim is merely broader in scope than those of the patent. Therefore, the patent claim anticipates the application claim. See *In re Goodman*.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 20-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Cole (Patent Number 5,906,297).

Regarding claims 20-24, as shown in Figs. 1-3, Cole discloses a dividing device, comprising: a) an outer housing with an inlet 18, 21 and at least two outlets 22-25; b) at least two pump chambers placed adjacently of each other in the outer housing, each with a pump chamber 32-35 infeed connected to the inlet and each with a pump chamber discharge connected to the outlet 22-25; and c) at least two vane-type rotors, one in each pump chamber 42 and with a rotation axis in line, each vane-type rotor comprising a hub 44 provided with continuous vanes 48, 49 which are slidable through the hub along their longitudinal axis and almost

Art Unit: 3748

perpendicularly of the axis of the hub, wherein the outer housing is divided into outer housing segments; each outer housing segment comprising at least one inlet opening (not numbered; however, clearly seen in Fig. 3) and at least one outlet opening 22-25; each outer housing segment comprising one pump chamber 42; the outer housing segments being identical; each outer housing segment comprising an inlet and an outlet 22-25.

Regarding claims 25-35, Cole further discloses outer housing segments are enclosed between closed end parts (not numbered; however, clearly seen in Fig. 2); the outer housing segments being in parallel arrangement; the vane-type rotors forming a vane-type rotor assembly; each outer housing segment being provided with a cylinder running through the outer housing segment and having a longitudinal axis practically parallel to the rotation axis of the vane-type rotor assembly, wherein the pump chambers are held in the cylinder; the cylinder being a circular cylinder (see Fig. 2); the cylinder running continuously through the segments; the outer housing segments are mirror-symmetrical relative to a plane of symmetry perpendicularly of the longitudinal axis of the cylinder; each outer housing segment comprising one pump chamber 42 wherein each pump chamber extends into a subsequent segment; the outer housing segments being cylindrical with end surfaces, and forming together with the end surfaces on each other a cylindrical outer housing, and the pump chambers are each cylindrical with end surfaces, and connecting together form a cylinder in the outer housing, wherein the end surfaces of the pump chambers are offset relative to the end surfaces of the outer housing segments; the pump chambers 42 being closed on one end surface and open on the other side, wherein the pump chambers are arranged with the closed end surface toward the open end

Art Unit: 3748

surface of a subsequent pump chamber; the vane-type rotor forming a part of the closure of the closed end surface (see Fig. 2).

***Prior Art***

The IDS (PTO-1449) filed on May 18, 2006 has been considered. An initialized copy is attached hereto.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and consists of two patents: Kapur et al. (U.S. Patent Number 5,037,283) and Brick et al. (U.S. Patent Number 7,048,525), each further discloses a state of the art.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theresa Trieu whose telephone number is 571-272-4868. The examiner can normally be reached on Monday-Friday 8:30am- 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion can be reached on 571-272-4859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3748

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TT  
February 27, 2007



Theresa Trieu  
Primary Examiner  
Art Unit 3748